



BOARD FOR GEOLOGISTS AND GEOPHYSICISTS
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MINUTES OF THE MEETING OF THE BOARD FOR GEOLOGISTS AND GEOPHYSICISTS

November 12, 2004

2535 Capitol Oaks Drive
Sacramento, CA 95833-2926

1. CALL MEETING TO ORDER

Craig Copelan, President, called the meeting to order at 9:30 a.m.

2. ROLL CALL TO ESTABLISH QUORUM

Craig Copelan, President
Robert A. Matthews, Ph.D., Vice President
William E. Black
Jeffrey Schmidt (arrived at 10:15 a.m.)

Others in attendance:

Paul Sweeney, Executive Officer
George Dunfield, Enforcement Manager
DeLesa Swanigan, Office Manager
Gary Duke, Legal Counsel, Department of Consumer Affairs (DCA)
Tony Sawyer, Chair, Technical Advisory Committee (TAC)
Kris Vyverberg, Department of Fish and Game
Phillip Ryall, Legislative Committee Member
Jane Gill-Shafer, California Council of Geoscience Organizations
Charles Nestle, Los Angeles County Department of Public Works
Clint Dalton, Center for Public Interest Law (CPIL)
Dave Parson, North Coast RWQCB

3. STATUS REPORT ON THE REGISTERED GEOPHYSICIST OCCUPATIONAL ANALYSIS (MONTEZ)

Executive Officer, Paul Sweeney, informed the Board that the Office of Examination Resources (OER) is currently conducting the analysis. The OER is in the process of interviewing licensed Geophysicists, after which, the Task Force will meet and develop a survey that will be distributed to all licensed Geophysicists. Upon receipt of the surveys, results will be tallied and a few workshops conducted. The final report is due to the Board by June 30, 2005.

4. TECHNICAL ADVISORY COMMITTEE (TAC) REPORT

Tony Sawyer, Chair, TAC, reported the following TAC datum:

a. Forest practice issues involving the practice of geology

The TAC met on October 29, 2004 and reviewed the Department of Fish and Game's (DFG) "Upslope Assessment and Restoration Practices" document posted on DFG's website. After a very thorough review, the TAC concluded that a lot of information presented in the document is the practice of geology; however, there is no geology licensure requirements stated. Additionally, the guidelines do not require the work to be performed under the supervision of a licensed Geologist or Engineer. The document is used by potential grantees as a guideline for applying for grants from the DFG. The TAC has grave concerns that unlicensed persons are performing geological work under the grant programs, with very little or no scrutiny of their work.

Mr. Sawyer further stated that testimony presented at the TAC meeting indicated that there is a 60% failure rate of the repairs performed under the DFG guidelines. The TAC recommended sending a letter to DFG directing their attention to this matter before they begin their grant solicitation process in January/February 2005.

Kris Vyverberg, Technical Specialist, DFG, commented that she does not disagree with the TAC's assessment of the document, or that work is being performed by persons that are not licensed as Geologists. Ms. Vyverberg informed the Board that DFG's goal is to revise the document by January 2005.

Ms. Vyverberg recommended that the TAC conduct a line-by-line review of the document and denote what the Board perceives as the magnitude of the problem, and a starting point for technical staff to begin addressing the issues.

Mr. Black recommended that the document be removed from DFG's web-site pending modification.

The Board reviewed a letter drafted by Mr. Sweeney to DFG outlining the Board's concerns with the DFG document. Mr. Copelan directed Mr. Sweeney to revise the letter and include a few of the more egregious examples of unlicensed practice to help illustrate the Board's concerns.

b. Other issues from October 29, 2004 TAC meeting

- The TAC has been working on guidelines for the underground regulations to identify when a licensed geologist is required.
- The TAC has completed the licensure fact sheet on groundwater investigations. The TAC is currently working on geophysicists, geomorphology, erosion sediments, wells, and fault investigations.

5. PUBLIC COMMENT ON NON-AGENDA ITEMS

No comments on non-agenda items.

6. APPROVAL OF THE MINUTES OF THE SEPTEMBER 24, 2004 BOARD MEETING

Mr. Schmidt moved to approve the minutes from the September 24, 2004 Board meeting. Dr. Matthews seconded. The motion passed unanimously.

7. ADJOURN MEETING TO CONVENE PUBLIC HEARINGS TO AMEND SECTION 3005, TITLE 16, DIVISION 29, CALIFORNIA CODE OF REGULATIONS, CONCERNING FEES

Mr. Sweeney presided over the public hearing for the Board. He announced that the Board was conducting a public hearing to amend section 3005 of Title 16, California Code of Regulations. He also announced the authority for the amendments to the regulation, the date, time and location of the hearing, the procedures for notification of the hearing and the procedures for conduct of the hearing and submittal of comments.

There were no public comments presented at the hearing. Mr. Sweeney announced that the Board did not receive any written comments.

Mr. Sweeney adjourned the public hearing at 10:25 AM.

Mr. Schmidt moved to adopt the amendments to section 3005 of Title 16, California Code of Regulations.

Dr. Matthews seconded.

The motion passed unanimously.

8. RECONVENE BOARD MEETING

Mr. Copelan reconvened the meeting.

9. LEGISLATIVE COMMITTEE REPORT

Mr. Sweeney reported that Senate Bill 1914 was signed by Governor Schwarzenegger and will become effective on January 1, 2005. The bill changed the name "Registered Geologist" to "Professional Geologist" and established a new Geologist-in-Training classification.

The Joint Committee on Boards, Commissions and Consumer Protection (JCBCCP) has postponed the Sunset Review Hearings originally scheduled for December 7-9, 2004, to January 4-6, 2005. Mr. Sweeney will inform the Board of the date and time of the Board's hearing as soon as it is published.

Mr. Sweeney directed the Board's attention to a letter responding to questions from

David Link, Principal Consultant, JCBCCP. Mr. Sweeney informed the Board that he participated in a very positive meeting with Mr. Link and Nancy Hall, Deputy Director, Board Relations, on Monday, November 8, 2004. Mr. Link and Ms. Hall are very supportive of the Board.

10. CONSIDERATION OF LETTER TO FEDERAL EPA ON PROPOSED CERCLA RULE CHANGE (40 CFR PART 312 – STANDARDS AND PRACTICES FOR ALL APPROPRIATE INQUIRIES [RELATES TO ENVIRONMENTAL PROFESSIONALS])

Mr. Sweeney presented the Board with a draft letter to the EPA commenting on the EPA's proposed regulatory changes. Mr. Sweeney recommended that the following additional language be added to the letter "Before commencing work, a person should determine the applicability of state professional licensing or registration laws to the activities to be undertaken as part of the inquiry identified in the Section 312.21(b)." The draft language was sent to all Association of State Boards of Geology (ASBOG) member states and those states are going to forward the same or similar letter to the EPA.

Dr. Matthews moved to approve the letter with a few minor changes. Mr. Schmidt seconded. The motion passed unanimously.

11. REPORT ON THE ASSOCIATION OF STATE BOARDS OF GEOLOGY (ASBOG) ANNUAL MEETING IN BOISE, IDAHO

Mr. Sweeney reported the following regarding the ASBOG meeting:

- a. ASBOG is increasing its Fundamentals of Geology exam fees from \$125 to \$150 effective October 2005. The Board will continue to administer the exam once a year.
- b. Mr. Sweeney directed the Board's attention to the pending ASBOG contract and noted that Sam Christiano promised him that the Board would have the contract, approved by ASBOG, by the November 12, 2004 Board Meeting. However, as of this meeting, the contract has not been received.
- c. Mr. Sweeney provided an update on the Board's request for the Bureau of State Audits to conduct a performance audit of ASBOG, and directed the Board's attention to the ASBOG financial documents submitted to the Board by Philip J. Jelichich, Deputy State Auditor. The documents are copies of ASBOG's Form 990s that were submitted to the Internal Revenue Service. Mr. Sweeney recommended that a comprehensive audit of ASBOG be conducted in the near future. To do so, the Board will have to pay all associated costs and secure approval from the ASBOG Executive Committee (which may be difficult).
- d. ASBOG is continuing their work on the task analysis for the Registered Geologist exam.
- e. The AIPG entered into a Memorandum of Understanding with ASBOG to conduct exams for new Certified Professional Geologists (CPGs). There is a lot of consternation amongst states that do not license geologists. CPGs are trying to determine how to proceed.

12. EXAMINATION COMMITTEE REPORT

Mr. Sweeney provided the following Examination Committee report:

- a. We have contracted out for our March 4, 2005 examination.
- b. As of today, we have approved the following applications: 75 Registered Geologists, 3 Geophysicists, 23 Engineering Geologists and 16 Hydrogeologists. The application deadline is December 24, 2004.
- c. It is anticipated that the number of applicants taking the Spring 2005 exam will be consistent with the number of applicants in 2004.

13. REPORT ON PROPOSED NEW REGULATIONS

Mr. Sweeney informed the Board that he received an e-mail from the Office of Administrative Law requesting the Board's proposed Rulemaking Calendar for 2005. One of the items will be the \$25 increase in the Fundamentals of Geology exam. The other two proposed items will be the Complaint Disclosure Policy and the revised citation regulations.

Gary Duke, Legal Counsel, noted that the purpose of the revised Complaint Disclosure Policy is to standardize the way various Boards/Bureaus within the department handle summary complaint information. The revised citation regulations are a result of legislation enacted last year that increased the department's authorization for cite and fines from a maximum of \$2,500 to \$5,000. The effect of this change requires each of the individual Boards/Bureaus that have citation authority to amend their regulations.

Mr. Copelan asked Mr. Duke to comment on Proposition 59. Mr. Duke informed the Board that Proposition 59 makes three different categorical changes to laws that deal with access to public information: 1) It makes it a constitutional declaration that people have a right of access to the government and its information; 2) It provides a directive to the judiciary that when interpreting rules related to the public's right of access, access must be construed broadly and exceptions very narrowly; and 3) any new exceptions must be clarified with findings. Most records are deemed to be public records; however, there is a list of exceptions to the Public Records Act which we have to invoke. This law will require the Board to be very detailed as to the application whenever we invoke any of the specific exceptions.

Mr. Black moved to continue action on the Complaint Disclosure Policy and the revised citation regulations in 2005. Mr. Schmidt seconded. The motion passed unanimously.

14. CLOSED SESSION

The Board went into closed session.

15. REPORT ON RESULTS OF CLOSED SESSION

The Board made a decision on a personnel issue.

16. ELECTION OF OFFICERS AND SELECTION OF COMMITTEE MEMBERS

Dr. Matthews moved to retain Mr. Copelan as the Board President. Mr. Black seconded.

Mr. Black moved to retain Dr. Matthews as the Board Vice President. Mr. Schmidt seconded.

Both motions were passed unanimously.

Mr. Copelan announced an opening on the TAC and directed the Board's attention to two applicants' resumes included in the Board package, Ms. Kris Vyverberg and Mr. Larry Knauer.

Mr. Sawyer informed the Board that existing guidelines for filling vacancies on the TAC are as follows: interested applicants submit their resumes to the Board/TAC; the TAC reviews the resumes and recommends someone whom the TAC believes will meet the needs of the committee; then the TAC presents the individual to the Board. Mr. Sawyer recommended that if the Board feels that TAC needs to immediately fill the one vacant position, to appoint Ms. Vyverberg for the remainder of Brian Hirst's term, through June 30, 2005.

Mr. Schmidt moved that the Board appoint Ms. Vyverberg to the TAC to fulfill the remainder of Mr. Hirst's term, through June 30, 2005. Dr. Matthews seconded. The motion passed unanimously.

Dr. Matthews commended Mr. Sawyer and the committee for the excellent job they are doing.

17. ESTABLISH MEETING CALENDAR FOR 2005

The 2005 Board meetings were scheduled for February 11, May 20, July 15 and December 2.

18. EXECUTIVE OFFICER'S REPORT

Mr. Sweeney introduced DeLesa Swanigan, the Board's new AGPA.

Mr. Dunfield reported that the Board has 55 open enforcement cases: 69% are against unlicensed persons and 31% are against licensees.

Mr. Dunfield distributed Vol. 14, No. 10 GSA Today (November, 2004) - cover article entitled "Geology, Geomorphology, and the Restoration Ecology of Salmon." He also supplied proposed contract language provided to DFG for inclusion in the DFG grant solicitation package which includes references to the Little Brooks Act (Government Code, Title 1, Division 5, Chapter 10: qualification-based contracting).

Mr. Dunfield described the development of professional liability from professional services provided during depositions (e.g., Boards Citation and Order against Dr. Mark

Germine, dated November 20, 2002). Case law has been unclear as to whether or not a licensee is subject to professional liability based upon his or her testimony. Mr. Dunfield provided DCA's recent legal opinion issued by Board Counsel, Gary Duke, regarding licensee requirements when called upon to testify as an expert witness. This position was formally affirmed in the Attorney General's "Official Report of Opinion", dated April 28, 2004. In addition, a similar concept was also recently upheld by the Pennsylvania Supreme Court: licensees may be held to a higher standard when providing expert testimony on licensed professional matters.

Mr. Dunfield is working on an increasing number of formal Attorney General (AG) and District Attorney's office cases. Mr. Dunfield will be attending a settlement conference at the AG's office in Southern California on December 9, 2004 regarding two Certified Engineering Geologists.

Mr. Dunfield's affiliation/work with the National Ground Water Association (NGWA) and with Board's technical experts on American Society for Testing and Materials (ASTM) task forces work has contributed to Federal EPA's acceptance of the proposed language supporting licensing requirements for professional licensure for "environmental professionals" nationwide. NWGA's letter of support for the Federal EPA's All Appropriate Inquiry (AAI) language changes is welcomed as is the Board's letter of support paralleling the NWGA notification letter (Agenda Item 10). (Many ASBOG states as well as ASBOG itself sent comment letters similar to the Board's to the EPA). The adoption of the AAI language will have far-reaching effects in professional environmental services in California.

Mr. Dunfield reported on continuing enforcement outreach efforts and, as an example, conveyed a Santa Clara County job announcement that the County recently began requiring applicants to possess a valid Professional Geologist's license in their hiring practices. Mr. Dunfield also received an invitation from the California Mining Association to make a presentation at their May 25-27, 2005 Annual conference.

19. ADJOURN MEETING

Craig Copelan adjourned the meeting at 2:45 p.m.

CRAIG A. COPELAN, P.E., BOARD PRESIDENT

PAUL SWEENEY, BOARD EXECUTIVE OFFICER

Date Approved: February 11, 2005